

House Bill 3

By: Representative Willard of the 51st

A BILL TO BE ENTITLED
AN ACT

To amend Part 2 of Article 1 of Chapter 6 of Title 12 and Title 24 of the Official Code of Georgia Annotated, relating to the practice of professional forestry and evidence, respectively, so as to conform provisions of the Code due to the passage of 2011 HB 24 and HB 214; to change provisions relating to using a writing to refresh memory; to reassign functions of the former Division of Public Health of the Department of Community Health to the new Department of Public Health relating to disclosure of AIDS confidential information; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 2 of Article 1 of Chapter 6 of Title 12 of the Official Code of Georgia Annotated, relating to the practice of professional forestry, is amended by revising Code Section 12-6-48, relating to the State Board of Registration for Foresters and the records of proceedings, as follows:

"12-6-48.

The board shall keep a record of its proceedings. ~~The records of the board shall be prima-facie evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced."~~

SECTION 2.

Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by revising subsection (b) of Code Section 24-6-612, relating to writing used to refresh memory, as follows:

"(b) If a witness uses a writing to refresh his or her memory before testifying at trial and the court in its discretion determines it is necessary in the interests of justice, an adverse

party shall be entitled to have the writing produced at the trial, to inspect it, to cross-examine the witness on such writing, and to introduce in evidence those portions of such writing which relate to the testimony of the witness. If the writing used is protected by the attorney-client privilege or as attorney work product under Code Section 9-11-26, use of the writing to refresh recollection prior to ~~the trial~~ testifying shall not constitute a waiver of that privilege or protection. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions of such writing not so related, and order delivery of the remainder of such writing to the party entitled to such writing. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to an order under this Code section, the court shall make any order justice requires; provided, however, that in criminal proceedings, when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial."

SECTION 3.

Said title is further amended by revising subsections (h), (t), (x), and (aa) of Code Section 24-12-21, relating to disclosure of AIDS confidential information, as follows:

"(h)(1) An administrator of an institution licensed as a hospital by the Department of Community Health or a physician having a patient who has been determined to be infected with HIV may disclose to the Department of ~~Community~~ Public Health:

(A) The name and address of that patient;

(B) That such patient has been determined to be infected with HIV; and

(C) The name and address of any other person whom the disclosing physician or administrator reasonably believes to be a person at risk of being infected with HIV by that patient.

(2) When mandatory and nonanonymous reporting of confirmed positive HIV tests to the Department of ~~Community~~ Public Health is determined by that department to be reasonably necessary, that department shall establish by regulation a date on and after which such reporting shall be required. On and after the date so established, each health care provider, health care facility, or any other person or legal entity which orders an HIV test for another person shall report to the Department of ~~Community~~ Public Health the name and address of any person thereby determined to be infected with HIV. No such report shall be made regarding any confirmed positive HIV test provided at any anonymous HIV test site operated by or on behalf of the Department of ~~Community~~ Public Health.

(3) The Department of ~~Community~~ Public Health may disclose that a person has been reported, under paragraph (1) or (2) of this subsection, to have been determined to be infected with HIV to the board of health of the county in which that person resides or is located if reasonably necessary to protect the health and safety of that person or other persons who may have come in contact with the body fluids of the HIV infected person. The Department of ~~Community~~ Public Health or county board of health to which information is disclosed pursuant to this paragraph or paragraph (1) or (2) of this subsection:

(A) May contact any person named in such disclosure as having been determined to be an HIV infected person for the purpose of counseling that person and requesting therefrom the name of any other person who may be a person at risk of being infected with HIV by that HIV infected person;

(B) May contact any other person reasonably believed to be a person at risk of being infected with HIV by that HIV infected person for the purposes of disclosing that such infected person has been determined to be infected with HIV and counseling such person to submit to an HIV test; and

(C) Shall contact and provide counseling to the spouse of any HIV infected person whose name is thus disclosed if both persons are reasonably likely to have engaged in sexual intercourse or any other act determined by the Department of ~~Community~~ Public Health likely to have resulted in the transmission of HIV between such persons within the preceding seven years and if that spouse may be located and contacted without undue difficulty."

"(t)(1) A superior court of this state may order a person or legal entity to disclose AIDS confidential information in its custody or control to:

(A) A prosecutor in connection with a prosecution for the alleged commission of reckless conduct under subsection (c) of Code Section 16-5-60;

(B) Any party in a civil proceeding; or

(C) A public safety agency or the Department of ~~Community~~ Public Health if that agency or department has an employee thereof who has, in the course of that employment, come in contact with the body fluids of the person identified by the AIDS confidential information sought in such a manner reasonably likely to cause that employee to become an HIV infected person and provided the disclosure is necessary for the health and safety of that employee,

and, for purposes of this subsection, the term 'petitioner for disclosure' means any person or legal entity specified in subparagraph (A), (B), or (C) of this paragraph.

(2) An order may be issued against a person or legal entity responsible for recording, reporting, or maintaining AIDS confidential information to compel the disclosure of that

information if the petitioner for disclosure demonstrates by clear and convincing evidence a compelling need for the information which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the public health, safety, or welfare needs or any other public or private need for the disclosure against the privacy interest of the person identified by the information and the public interest which may be disserved by disclosures which may deter voluntary HIV tests.

(3) A petition seeking disclosure of AIDS confidential information under this subsection shall substitute a pseudonym for the true name of the person concerning whom the information is sought. The disclosure to the parties of that person's true name shall be communicated confidentially, in documents not filed with the court.

(4) Before granting any order under this subsection, the court shall provide the person concerning whom the information is sought with notice and a reasonable opportunity to participate in the proceedings if that person is not already a party.

(5) Court proceedings as to disclosure of AIDS confidential information under this subsection shall be conducted in camera unless the person concerning whom the information is sought agrees to a hearing in open court.

(6) Upon the issuance of an order that a person or legal entity be required to disclose AIDS confidential information regarding a person named in that order, that person or entity so ordered shall disclose to the ordering court any such information which is in the control or custody of that person or entity and which relates to the person named in the order for the court to make an in camera inspection thereof. If the court determines from that inspection that the person named in the order is an HIV infected person, the court shall disclose to the petitioner for disclosure that determination and shall impose appropriate safeguards against unauthorized disclosure which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

(7) The record of the proceedings under this subsection shall be sealed by the court.

(8) An order may not be issued under this subsection against the Department of ~~Community~~ Public Health, any county board of health, or any anonymous HIV test site operated by or on behalf of that department."

"(x) Neither the Department of ~~Community~~ Public Health nor any county board of health shall disclose AIDS confidential information contained in its records unless such disclosure is authorized or required by this Code section or any other law, except that such information in those records shall not be a public record and shall not be subject to disclosure through subpoena, court order, or other judicial process."

"(aa) In connection with any judicial proceeding in which AIDS confidential information is disclosed as authorized or required by this Code section, the party to whom that

136 information is thereby disclosed may subpoena any person to authenticate such AIDS
137 confidential information, establish a chain of custody relating thereto, or otherwise testify
138 regarding that information, including, but not limited to, testifying regarding any
139 notifications to the patient regarding results of an HIV test. The provisions of this
140 subsection shall apply to records, personnel, or both of the Department of ~~Community~~
141 Public Health or a county board of health notwithstanding Code Section 50-18-72, but only
142 as to test results obtained by a prosecutor under subsection (q) of this Code section and to
143 be used thereby in a prosecution for reckless conduct under subsection (c) of Code Section
144 16-5-60."

145 **SECTION 4.**

146 This Act shall become effective upon its approval by the Governor or upon its becoming law
147 without such approval.

148 **SECTION 5.**

149 All laws and parts of laws in conflict with this Act are repealed.